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MICHAEL BODAK, JR., CLERK

In The  
**Supreme Court of the United States**  
October Term 1976

No. 76-706

MARITIME TERMINALS, INC. AND  
AETNA CASUALTY AND SURETY CO.,  
*Petitioners,*

v.

DONALD D. BROWN AND  
VERNIE LEE HARRIS AND  
THE SECRETARY OF LABOR AND  
UNITED STATES DEPARTMENT OF LABOR,  
*Respondents.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR  
THE FOURTH CIRCUIT

REPLY FOR PETITIONERS

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This reply is being filed by petitioners in order to respond to certain matters raised in the Brief in Opposition filed by respondents, Brown and Harris and Memorandum for the Federal Respondents filed by the Solicitor General.

Respondents Brown and Harris suggest in their Brief in Opposition that this cause is moot because compensation was paid by petitioners to both Brown and Harris in accordance with orders entered by Administrative Law Judges Capps and Howder respectively on August 15, 1974 and August 22, 1974 (App. 80 and App. 92). Respondents

further argue that the only way an employer/insurer can seek review of a compensation order is to refuse to comply with the compensation order, thereby requiring respondents to apply for enforcement of the order in the United States District Court in accordance with the provisions of 33 U.S.C. § 921(d).

These arguments show a lack of understanding on the part of respondents of the appeal procedures set forth in the LHWCA (as amended), 33 U.S.C. §§ 921(b) and 921(c) set out in detail how review of compensation orders is to be accomplished and these sections of the Act provide for an appeal of the compensation order to the Benefits Review Board and the United States Court of Appeals. More importantly these sections of the Act provide in part:

"The payment of the amounts required by an award shall not be stayed pending final decision in any such proceeding unless ordered by the court [or the Board]. No stay shall be issued unless irreparable injury would otherwise ensue to the employer or carrier."

§ 921(c) relating to judicial review also adds the following:

"The order of the court allowing any stay shall contain a specific finding based upon evidence submitted to the court and identified by reference thereto, that irreparable damage would result to the employer and specifying the nature of the damage."

Since the compensation orders and awards in these cases were entered following the rendering of the decisions of the Administrative Law Judges, petitioners were required to pay compensation benefits to respondents. However, by filing timely appeals to the Benefits Review Board, and the United States Court of Appeals and by seeking review by way of a Writ of Certiorari in this Court, petitioners have fully

preserved their right to recover the payments made to respondents in the event this Court should reverse the decisions below. Thus a justiciable controversy is presented in this case and it is not moot.

Respondents reliance on certain language in the Second Circuit decision in *Pittston Stevedoring Corp. et al. v. Dellaventura et al.*, F.2d (2nd Cir. 1976), *pet. for cert. granted sub. nom., Northeast Marine Terminal Co. et al. v. Caputo et al.*, Nos. 76-444 and 76-454 [App. 94] is misplaced. In *Pittston* unlike the present case the insurer who paid the compensation award chose not to contest it further and did not join in the appeals to either the Benefits Review Board or the United States Court of Appeals. Thus in the view of the Second Circuit, the insurer by not appealing could not recover the payments made from the Claimant even if the decision of the Benefits Review Board was reversed. (App. 109). However, it is clear from the Court's decision in *Pittston* that had the insurer joined in the appeals, the insurer's right to recover its payment would have been preserved, and a justiciable controversy would have been presented despite the fact that the compensation award had been paid. [App. 109, 112 n.10].

As noted by the Solicitor General in a Memorandum recently filed in this case, this Court on December 6, 1976 granted Petitions for Certiorari in two similar cases from the United States Court of Appeals for the Second Circuit, *Northeast Marine Terminal Co. v. Caputo*, No. 76-444 and *International Terminal Operating Co. v. Blundo*, No. 76-454. In addition Petitions for Certiorari are pending in three other cases.<sup>1</sup> The present case and *Adkins* were considered together by the Court of Appeals for the Fourth

<sup>1</sup> *John T. Clark & Son of Boston, Inc. v. Stockman, et al.* No. 76-571  
*P.C. Pfeiffer Co., Inc., et al. v. Ford, et al.* No. 76-641  
*Adkins, et al. v. ITO Corp. of Baltimore, et al.* No. 76-730

Circuit, and since the panel opinion of the Fourth Circuit in the present case (App. 1) was the first decision of any Court of Appeals to deal with how the important coverage issues under the LHWCA (as amended) are to be resolved, all subsequent Court of Appeals decisions including *Caputo* and *Blundo* have discussed the Fourth Circuit's "point of rest" approach.

While the Solicitor General argues that this Court should defer consideration of the present petition pending disposition of *Blundo* and *Caputo*, petitioners submit that this Court's review of these important coverage questions would be aided by consideration of the present case and *Adkins* together with *Blundo* and *Caputo*. The record in the present case and the record in *Adkins* contain considerable information regarding marine terminal operations and the comprehensive nature of these records should be of considerable assistance to the Court in resolving the difficult questions which have arisen with regard to how the coverage provisions of the LHWCA, as amended, are to be interpreted.

For the foregoing reasons, as well as those which have been set forth in the petition, we urge this Court to grant certiorari.

Respectfully submitted,

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